

**U.S. Pat. Appl. Ser. No. 10/600,853
Attorney Docket No. 10191/3107
Reply to Final Office Action of October 29, 2004**

REMARKS

Claims 1 to 19 are now pending.

Applicants respectfully request reconsideration of the present application in view of this response.

It is respectfully requested that the Examiner acknowledge whether the drawings are now accepted.

It is believed that this Amendment does not raise new issues that would require further consideration and/or search, and also does not raise the issue of new matter. It is also believed and respectfully submitted that this Amendment places the application in better form for appeal by materially reducing or simplifying the issues for appeal.

Claims 1 to 4, 7 to 10, 14, 15, and 19 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,212,456 (the "Stride" reference). It is assumed that the indication that claim 8 stands rejected as anticipated by the "Stride" reference is a mistake since the Office Action specifically admits that the "Stride" reference does not disclose all of the features of claim 8.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102(e), the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (See Scripps Clinic & Research Foundation v. Genentech, Inc., 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the prior Office Action does not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

Claim 1 as presented provides the features of a non-pedestrian-impact sensor and a pedestrian-impact sensor, such that a processor triggers a restraining device as a function of a combination of their signals. As set forth in the Response, filed September 20, 2004, it is believed and respectfully submitted that any review of the "Stride" reference makes plain that it does not identically disclose (or even suggest) the features of a non-pedestrian-impact sensor and a pedestrian-impact sensor, as provided for in the context of claim 1. The Office Action asserts that the "Stride" reference, at column 1, lines 20 to 35, discloses these features.

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However, the referenced section refers only to a sensor combination that functions as a *pedestrian-impact* sensor to “distinguish between impacts with pedestrians and other sorts of impacts.”

Notwithstanding the above, to facilitate matters, claim 1 as presented includes a feature of claim 9 (which has been revised) that provides that the non-pedestrian-impact sensor includes an acceleration sensor. Since the “Stride” reference does not identically disclose (or even suggest) this feature, it is respectfully submitted that the “Stride” reference does not identically disclose (or even suggest) all of the features of claim 1 as presented.

Thus, it is respectfully submitted that the “Stride” reference does not anticipate claim 1 (or any of its dependent claims 2 to 19).

Furthermore, with respect to claim 19, which provides that the restraining device of claim 1 is a vehicle-occupant restraining device, the Office Action has not explained how the “Stride” reference identically discloses this feature. For example, the “Stride” reference refers to a hood-mounted airbag, column 4, lines 3 to 6, for protecting a pedestrian. Column 2, lines 54 to 57. Indeed, it is respectfully submitted that the “Stride” reference does not identically disclose (or even suggest) a processor that triggers a vehicle-occupant restraining device as a function of a combination of signals received from a non-pedestrian-impact sensor and a pedestrian-impact sensor.

Accordingly, claims 1 to 4, 7 to 10, 14, 15 and 19 are allowable.

Claims 5, 12, 13, and 16 to 18 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of the “Stride” reference and U.S. Patent No. 6,749,218 (the “Breed” reference).

Claims 5, 12, 13, and 16 to 18 depend from claim 1 and are therefore allowable for essentially the same reasons as claim 1, since any review of the secondary reference makes plain that it does not cure the critical deficiencies of the primary reference. Accordingly, claims 5, 12, 13, and 16 to 18 are allowable.

Furthermore, with respect to claims 13, 16, and 17, to the extent the Examiner relies on Official Notice, Applicants respectfully traverse and request an affidavit. M.P.E.P. 2144.03.

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Claims 6 and 8 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of the "Stride" reference and U.S. Patent No. 6,513,831 (the "Stierle" reference).

Claims 6 and 8 depend from claim 1 and are therefore allowable for essentially the same reasons as claim 1, since any review of the secondary reference makes plain that it does not cure the deficiencies of the primary reference. Accordingly, claims 6 and 8 are allowable.

As further regards all of the obviousness rejections, to reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Since the references relied upon do not disclose or even suggest all of the features of the rejected claims as explained above, it is respectfully submitted that these claims are allowable.

It is therefore respectfully requested that the obviousness rejections be withdrawn.

Accordingly, claims 1 to 19 are allowable.

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Conclusion

In view of the foregoing, it is believed that the rejections have been obviated, and that claims 1 to 19 are allowable. It is therefore respectfully requested that the rejections be withdrawn, and that the present application issue as early as possible.

Dated: 12/30/04

Respectfully submitted,
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